IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 756 of 2003
with
CIVIL APPLICATION NO 3733 of 2003
and
CIVIL APPLICATION NO 4940 of 2004
in
SPECIAL CIVIL APPLICATION NO 6008 of 2002

and
LETTERS PATENT APPEAL NO 759 of 2003
with
CIVIL APPLICATION NO 3738 of 2003
and
SPECIAL CIVIL APPLICATION NO 4941 of 2004
in
SPECIAL CIVIL APPLICATION NO 6007 of 2002

and
LETTERS PATENT APPEAL NO 750 of 2003
with
CIVIL APPLICATION NO 3728 of 2003
and
CIVIL APPLICATION NO 4929 of 2004
in
SPECIAL CIVIL APPLICATION NO 6006 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SECRETARY

Versus

SB KHOKHAR

Appearance:

1. LETTERS PATENT APPEAL No. 756, 759 and 750 of 2003

MR HASIT D. DAVE, A.G.P. for Appellant No.

MR IS SUPEHIA for Respondent No. 1

RULE SERVED for Respondent No. 1,2-3

(in all matters)

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/12/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

All these matters are disposed of by this common Judgment and order.

2. Three writ petitions i.e. Special Civil Applications No.6006, 6007 and 6008, all of 2002, filed by the respondents - original petitioners, came to be allowed by Justice Jayant Patel, J. by his common Judgment and Order dated 28.1.2003, whereby the impugned orders of recovery passed by the Authority against the petitioners were quashed and set aside. Aggrieved by this common Judgment and order dated 28.1.2003, the Appellant - Government of Gujarat has filed these Appeals along with aforesaid three Civil Applications No.3733, 3738 and 3728, all of 2003, respectively in all the Appeals, seeking stay of the common judgment and order passed by the learned Single Judge allowing the writ petitions filed by the respondents - original petitioners.

3. Though separate Civil Applications were filed in all these Appeals, all these Appeals were admitted and subject to hearing the other side it was directed by the Hon'ble Ist Court that except the amount to be recovered, pursuant to the impugned notice, other retiral benefits of respondent No.1, in all the petitions, be released. Thus, it is clear that the Division Bench of this Court, while admitting all the Appeals, was not inclined to interfere with the common order passed by the learned

Single Judge granting other benefit of service to the respondents - original petitioners and all the Appeals were admitted only on the point of recovery of amount from the petitioner and no separate orders were passed on those civil Applications filed by the Appellant - State of Gujarat in all the Appeals.

4. For vacating the ex-parte Ad.interim relief against recovery amount, original petitioners filed Civil Application Nos.4940/04, 4941/04 and 4929/01 in the above Appeals.

5. It was agreed by both, learned AGP Shri Dave for the Appellant - State of Gujarat and learned Counsel Shri Supehia for the respondents, in all these Appeals, that the main Appeals be heard and disposed of today so that Civil Applications, filed in it, can be conveniently disposed of. Accordingly, all these Appeals are heard today and they are disposed of by this common Judgment and order.

6. Learned AGP Shri Dave for the Appellant - State of Gujarat, in all these Appeals, vehemently submitted that there was an error apparent on the part of the appellant - State of Gujarat of wrongly extending the benefit to the respondents, therefore, as soon as it had come to the notice of the State Government, it had decided to withdraw those benefits which were wrongly extended to the original petitioners. He submitted that when the original petitioners were not entitled for those benefit and if the same was required to be withdrawn after wrongly extended to them by the State Government then no interference was called for in the writ petition. He, therefore, submitted that common Judgment and order passed by the learned Single Judge on 28.1.2003 allowing all the three writ petitions, filed by the respondents petitioners be set aside and the petition filed by them be dismissed.

7. Before dealing with the aforesaid contentions raised by learned AGP Shri Dave, we would like to narrate few facts in nutshell, which are as under :

All the respondents - original petitioners were serving as Sales-tax Officers in the Sales-Tax Department of the appellant -State Government. All of them have retired from service some where in the year 2001. On 5.7.1991 the State Government had passed Resolution and pursuant to that Resolution all the original petitioners were given higher grade of pay scale with effect from 1.6.1987 and accordingly the amounts due to them were

also paid to them by the Appellant - State of Gujarat. Thereafter, another Resolution date 11.12.1995 came to be passed by the State of Gujarat whereby the higher grade of pay-scale granted to the original petitioners long back came to be withdrawn and the amount paid to them were sought to be recovered only after their retirement from service in 2001.

8. The said action of the Appellant - State of Gujarat, in all these Appeals, were challenged by the respondents - original petitioners by way of writ petitioners which were allowed by the learned Single Judge and the impugned order of recovery were quashed and set aside by the learned Single Judge relying on the Judgment of the Hon'ble Supreme Court in the case of P.H.REDDY v/s. N.T.R.D. reported in 2002(2) SLR 694 and the unreported Judgment of the Division Bench of this Court in LPA No.578/02. It has been held by the Division Bench of this Court as well as the Hon'ble Supreme Court in the aforesaid cases that once the higher pay scale is fixed, rightly or wrongly, and the benefit is already extended to the employee by paying the amount then subsequently such benefit cannot be withdrawn by the Government by cancelling its earlier Resolution.

9. From the Judgment of the learned Single Judge it is clear that by playing fraud or misrepresentation or their misdeed the original petitioners have not obtained the benefit of higher pay scale. Therefore, in absence of any mala fide intention on the part of the original petitioner they cannot be made to suffer later on and that too after a period of 4 years. It may be stated that the Ist resolution was passed in 1991 which was later on cancelled by the State Government after a period of 4 years i.e. in 1995 as, if no sufficient recovery was sought to be made from the original petitioner by the State Government after a period of six years of passing of the said Resolution in 1995, that too, after the petitioners retired from the service. Under the circumstances, when the learned Single Judge has exercised discretion in favour of the original petitioner and allowed the writ petition and quashed and set aside the impugned orders of recovery, then certainly this Court will not interfere with such discretionary order passed by the learned single Judge, in this LPA.

10. In view of the above discussion, all the Appeals, filed by the appellant - State of Gujarat, fail and are hereby dismissed. Once the Appeals are dismissed, all the three Civil Applications No.3733, 3738 and 3728, all of 2003, filed by the Appellants - applicants - State of

Gujarat, seeking stay against the order passed by the learned Single Judge are also hereby dismissed and the Ad.interim relief, granted earlier, shall stand vacated forthwith. Once the Civil Applications No.3733, 3738 and 3728, all of 2003, for interim relief filed by the applicants - State of Gujarat are dismissed then other three Civil Applications, viz. Civil Applications No.4940. 4941 and 4929, all of 2004, filed by the original petitioners for vacating the interim relief, will not survive any more with the dismissal of the main Appeals filed by the Appellant - State of Gujarat and, accordingly, those three Civil Applications are also stand disposed of. However, there shall be no order as to cost on these applications.

11. At this stage a request is made by learned Counsel Shri Supehia for the respondents - original petitioners that the Appellant - State of Gujarat be directed to release all the benefit to the original petitioners immediately which they have withheld so far. With the dismissal of Appeals, the appellant - State of Gujarat is bound to release all the benefit to the respondents - original petitioners, as ordered by the learned Single Judge, as early as possible and not later than 31.3.2005.

(B.J.Shethna, J.)

Date : December 16, 2004

(Sharad D.Dave,J.)

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